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**MAY 17 2006**

**OFFICE OF PETITIONS**

In re Application of:	:	
Roberts et. al.	:	
Application No. 09/820,722	:	DECISION ON
Filed: March 30, 2001	:	PETITION
Attorney Docket Number:	:	
1364.1001D2C	:	

This is a decision in response to the petition under 37 CFR 1.137(b), filed December 27, 2005, to revive the above-identified application. The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under [insert the applicable code section]". This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed June 23, 2005. The Office action set a three (3) month period for reply, and also provided for extensions of time under 37 CFR 1.136(a). Applicant filed an Amendment and three (3) month extension of time on December 23, 2005; however, the amendment failed to place the application in condition for allowance.

Applicant files the instant petition and provides that, included with the Amendment filed December 23, 2005, was an authorization to charge [the previously identified Deposit Account] any additional fee required under ... 35 CFR 1.17

(processing fees) during the prosecution of this application ... to maintain pendency thereof ..." Applicant requests that this general authorization to charge Applicant's deposit account "be interpreted as a Request for Continued Examination ...". Petition at p.1. Applicant authorizes this Office to charge the fee for a RCE as per the authorization to charge Applicant's deposit account filed December 23, 2005. Applicant alternatively requests revival of the application under 37 CFR 1.137(b) and continuation of prosecution under 37 CFR 1.114 (RCE). Applicant provides that "clearly the intent of the Applicant's was to continue prosecution ...".

The Examiner has reviewed the Amendment and concluded that the Amendment fails to place the application in condition for allowance.

Accordingly, since no complete and proper reply to the June 23, 2005 final Office action was received, the application became abandoned September 24, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

#### Applicable Law, Rules and MPEP

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed); (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) if required, a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)).

This petition lacks item (1) above.

As to item (1), 37 CFR 1.4(c) provide that "[s]ince different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects."

Here, Applicant seeks to (1) have this office construe an authorization to charge his deposit account as a RCE, and (2) Applicant request this Office construe the instant petition as a

RCE. In accordance with 37 CFR 1.4, Applicant is advised to file a proper RCE. Applicant is further advised that a RCE Transmittal request form may be obtained from our website at [www.uspto.gov](http://www.uspto.gov).


Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

  
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